

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA

Dr. Fiona Axelsson,

Plaintiff,

vs.

University of North Dakota School of Medicine and Health Sciences; Sanford; Sanford Health; and North Dakota Professional Health Program,

Defendants.

Case No.: 3:22-cv-00056-ARS

**DEFENDANT NORTH DAKOTA
PROFESSIONAL HEALTH PROGRAM'S
MOTION TO DISMISS PLAINTIFF'S
AMENDED COMPLAINT UNDER
FED. R. CIV. P. 12(B)(1), (6)**

[1] Pursuant to Fed. R. Civ. P. 12(b)(1) and (6), Defendant North Dakota Professional Health Program (NDPHP) respectfully brings this Motion to Dismiss Counts XXV (tortious interference with contract), XXVI (breach of contract), and XXVII (defamation) of plaintiff Dr. Fiona Axelsson's Amended Complaint, based on 1) lack of subject-matter jurisdiction; 2) NDPHP's statutory immunity from liability under North Dakota state law; and 3) Axelsson's failure to state a claim against NDPHP upon which relief can be granted.

[2] Axelsson's Amended Complaint fails to properly confer this Court with subject-matter jurisdiction over all three claims against NDPHP because, contrary to her allegations, she cannot meet the \$75,000 jurisdictional threshold for diversity jurisdiction, 28 U.S.C. § 1332(a)(2). To a legal certainty, Axelsson cannot meet this jurisdictional threshold because the damages she seeks are a legal impossibility under applicable North Dakota statutes. She also cannot meet this threshold because the damages alleged in her Amended Complaint are too remote, speculative, and conjectural and thus unrecoverable as a matter of law. Therefore, her claims must be dismissed for lack of subject-matter jurisdiction under Fed. R. Civ. P. 12(b)(1).

[3] In the alternative, Axelsson's claims are ripe for dismissal under Fed. R. Civ. P. 12(b)(6) because her Amended Complaint fails to state a claim against NDPHP upon which relief can be granted. On the face of her Amended Complaint, Axelsson faces an insuperable bar to relief under applicable North Dakota law. And all three claims against NDPHP fail in substance because Axelsson's allegations, if proven true, still would not entitle her to any relief as a matter of law. On these grounds, NDPHP respectfully moves to dismiss Axelsson's Amended Complaint and the claims asserted against NDPHP for failure to state a claim upon which relief can be granted.

[4] This Motion is supported by the arguments of counsel, all pleadings herein, the attached supporting brief, and any reply briefing that may be filed.,

Dated this 26th day of May, 2022.

By: /s/ Tracy Vigness Kolb
Tracy Vigness Kolb, ND ID# 05338
MEAGHER & GEER, PLLP
1900 Burnt Boat Drive, Suite 101
Bismarck, ND 58503
Ph: 701.222.1315
Direct Ph: 701.333.0638
tkolb@meagher.com

*Attorneys for Defendant North Dakota
Professional Health Program*

Certificate of Service

I certify that on May 26, 2022, the foregoing document was filed electronically with the Clerk of Court through ECF and that ECF will send a Notice of Electronic Filing (NEF) to the following:

Thomas D. Fiebiger – tom@fiebigerlaw.com
Attorneys for plaintiff

Matthew A. Sagsveen – masagsve@nd.gov
Courtney R. Titus – ctitus@nd.gov
*Attorneys for Defendant University of North Dakota
School of Medicine & Health Sciences*

Brent D. Kellelkamp – brent.kettelkamp@ogletree.com
Cynthia A. Bremer – cynthia.bremer@ogletree.com
Attorneys for Defendants Sanford and Sanford Health

Dated this 26th day of May, 2022.

BY: /s/ Tracy Vigness Kolb
Tracy Vigness Kolb, ND ID# 05338
MEAGHER & GEER, P.L.L.P.
1900 Burnt Boat Drive, Suite 101
Bismarck, ND 58503
Telephone: (701) 222-1315
tkolb@meagher.com

*Attorneys for Defendant North Dakota
Professional Health Program*